

SENATE BILL No. 414

DIGEST OF SB 414 (Updated February 14, 2005 11:01 am - DI 113)

Citations Affected: IC 6-3.1.

Synopsis: EDGE credit applications. Provides that the economic development for a growing economy (EDGE) board shall, in evaluating an EDGE credit application to retain existing jobs in Indiana submitted after December 31, 2005, determine whether the average compensation paid by the applicant exceeds: (1) the average compensation paid to employees working in the same industry sector within the county in which the applicant's business is located, if there is more than one business in that industry sector in the county; (2) the average compensation paid to employees working in the same industry sector in Indiana, if the applicant's business is the only business in that industry sector in the county but there is more than one business in that industry sector in Indiana; or (3) twice the federal minimum wage, if the applicant's business is the only business in that industry sector in Indiana. Provides that the EDGE board may, in evaluating an EDGE credit application to create existing jobs in Indiana after December 31, 2005, consider whether the average wage paid by the applicant exceeds the average wage paid to: (1) all employees working in the same industry sector in the county in which the applicant's business is located, if there is more than one business in that industry sector in the county; (2) all employees working in the same industry sector in Indiana, if the applicant's business is the only business in that industry sector in the county but there is more than one business in that industry sector in Indiana; or (3) all employees working in the county in which the applicant's business is located, if the applicant's business is the only business in that industry sector in Indiana.

Effective: July 1, 2005.

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January 13, 2005, read first time and referred to Committee on Economic Development

and Technology.
February 14, 2005, amended, reported favorably — Do Pass; reassigned to Committee on



First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or *this style type* reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 414

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A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

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Be it enacted by the General Assembly of the State of Indiana:

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SECTION 1. IC 6-3.1-13-5.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.3. As used in this chapter, "NAICS" refers to the North American Industry Classification System.

SECTION 2. IC 6-3.1-13-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5.5. As used in this chapter, "NAICS industry sector" refers to industries that share the same first two (2) digits of the six (6) digit NAICS code assigned to industries in the NAICS Manual of the United States Office of Budget and Management.

SECTION 3. IC 6-3.1-13-15.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15.5. This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board

SB 414—LS 7829/DI 103+



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1	determines that all the following conditions exist:	
2	(1) The applicant's project will retain existing jobs performed by	
3	the employees of the applicant in Indiana.	
4	(2) The applicant provides evidence that there is at least one (1)	
5	other competing site outside Indiana that is being considered for	
_	the project or for the relocation of jobs.	
6 7	(3) A disparity is identified, using the best available data, in the	
8	projected costs for the applicant's project in Indiana compared	
9	with the costs for the project in the competing site.	
.0	(4) The applicant is engaged in research and development,	
1	manufacturing, or business services, (as defined in according to	
2	the Standard Industrial Classification NAICS Manual of the	
3	United States Office of Management and Budget.	
4	(5) The average compensation (including benefits) provided to the	
5	applicant's employees during the applicant's previous fiscal year	
.6	exceeds:	
7	(A) for an application submitted before January 1, 2006,	
.8	the average compensation paid during that same period to all	
9	employees in the county in which the applicant's business is	
20	located by at least five percent (5%); or	
21	(B) for an application submitted after December 31, 2005,	=4
22	the amount specified by the calculation associated with one	
23	(1) of the following descriptions that characterizes the	
24	number of businesses in the NAICS industry sector to	
25	which the applicant's business belongs:	
26	(i) If there is more than one (1) business in the same	
27	NAICS industry sector in the county in which the	
28	applicant's business is located, determine the average	V
29	compensation paid during that same period to all	
0	employees working in the same NAICS industry sector	
31	in the county in which the applicant's business is located	
32	multiplied by one hundred five percent (105%).	
3	(ii) If the applicant's business is the only business in the	
4	same NAICS industry sector in the county in which the	
55	applicant's business is located but there is more than one	
66	(1) business in the same NAICS industry sector in	
37	Indiana, determine the average compensation paid	
8	during that same period to all employees working in the	
19	NAICS industry sector throughout Indiana multiplied by	
10	one hundred five percent (105%).	
1	(iii) If the applicant's business is the only business in the	
12	same NAICS industry sector in Indiana, determine the	



1	compensation for that same period corresponding to the		
2	federal minimum wage multiplied by two hundred		
3	percent (200%).		
4	(6) The applicant employs at least two hundred (200) employees		
5	in Indiana.		
6	(7) The applicant has prepared a plan for the use of the credits		
7	under this chapter for:		
8	(A) investment in facility improvements or equipment and		
9	machinery upgrades, repairs, or retrofits; or		
10	(B) other direct business related investments, including but not		
11	limited to training.		
12	(8) Receiving the tax credit is a major factor in the applicant's		
13	decision to go forward with the project, and not receiving the tax		
14	credit will increase the likelihood of the applicant reducing jobs		
15	in Indiana.		
16	(9) Awarding the tax credit will result in an overall positive fiscal		
17	impact to the state, as certified by the budget agency using the		
18	best available data.		
19	(10) The applicant's business and project are economically sound		
20	and will benefit the people of Indiana by increasing or		
21	maintaining opportunities for employment and strengthening the		
22	economy of Indiana.		
23	(11) The communities affected by the potential reduction in jobs		
24	or relocation of jobs to another site outside Indiana have		
25	committed at least one dollar and fifty cents (\$1.50) of local		
26	incentives with respect to the retention of jobs for every three		
27	dollars (\$3) in credits provided under this chapter. For purposes		
28	of this subdivision, local incentives include, but are not limited to,		
29	cash grants, tax abatements, infrastructure improvements,		
30	investment in facility rehabilitation, construction, and training		
31	investments.		
32	(12) The credit is not prohibited by section 16 of this chapter.		
33	SECTION 4. IC 6-3.1-13-17 IS AMENDED TO READ AS		
34	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 17. In determining the		
35	credit amount that should be awarded to an applicant under section 15		
36	of this chapter that proposes a project to create jobs in Indiana, the		
37	board shall may take into consideration the following factors:		
38	(1) The economy of the county where the projected investment is		
39	to occur.		
40	(2) The potential impact on the economy of Indiana.		
41	(3) The incremental payroll attributable to the project.		
42	(4) The capital investment attributable to the project		



1	(5) The amount the average wage paid by the applicant average
2	(5) The amount the average wage paid by the applicant exceeds the average wage paid:
3	(A) within the county in which the project will be located, in
4	the case of an application submitted before January 1,
5	2006; or
6	(B) in the case of an application submitted after December
7	31, 2005:
8	(i) to all employees working in the same NAICS industry
9	sector in the county in which the applicant's business is
10	located, if there is more than one (1) business in the same
11	NAICS industry sector in the county in which the
12	applicant's business is located;
13	(ii) to all employees working in the same NAICS industry
14	sector in Indiana in which the applicant's business is
15	located, if the applicant's business is the only business in
16	the same NAICS industry sector in the county in which
17	the applicant's business is located but there is more than
18	one (1) business in the same NAICS industry sector in
19	Indiana; or
20	(iii) to all employees working in the same county as the
21	county in which the applicant's business is located, if
22	there is no other business in Indiana in the same NAICS
23	industry sector.
24	(6) The costs to Indiana and the affected political subdivisions
25	with respect to the project.
26	(7) The financial assistance that is otherwise provided by Indiana
27	and the affected political subdivisions.
28	As appropriate, the board shall consider the factors in this section to
29	determine the credit amount awarded to an applicant for a project to
30	retain existing jobs in Indiana under section 15.5 of this chapter. In the
31	case of an applicant under section 15.5 of this chapter, the board shall
32	may consider the magnitude of the cost differential between the
33	projected costs for the applicant's project in the competing site outside
34	Indiana and the projected costs for the applicant's project in Indiana.
35	SECTION 5. IC 6-3.1-13-21 IS AMENDED TO READ AS
36	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 21. (a) If a pass through
37	entity does not have state income tax liability against which the tax
38	credit may be applied, a shareholder or partner of the pass through
39	entity is entitled to a tax credit equal to:
40	(1) the tax credit determined for the pass through entity for the
41	taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income



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1	to which the shareholder or partner is entitled.
2	(b) The credit provided under subsection (a) is in addition to a tax
3	credit to which a shareholder or partner of a pass through entity is
4	otherwise entitled under a separate agreement under this chapter. A
5	pass through entity and a shareholder or partner of the pass through
6	entity may not claim more than one (1) credit under the same
7	agreement.
8	(c) This Subsection (d) applies:
9	(1) only to a pass through entity that is a limited liability company
10	or a limited liability partnership owned wholly or in part by an
11	electric cooperative incorporated under IC 8-1-13; and
12	(2) if, at the request of a the pass through entity, if the board finds
13	that the amount of the average wage to be paid by the pass
14	through entity will be at least double the average wage paid:
15	within
16	(A) in the county in which the project will be located, in the
17	case of an application submitted before January 1, 2006;
18	or
19	(B) to all employees working in the same NAICS industry
20	sector in the county in which the project will be located, in
21	the case of an application submitted after December 31,
22	2005.
23	(d) The board may determine that:
24	(1) the a credit shall be claimed by the pass through entity
25	described in subsection (c); and
26	(2) if the credit exceeds the pass through entity's state income tax
27	liability for the taxable year, the excess shall be refunded to the
28	pass through entity.
29	If the board grants a refund directly to a pass through entity under this
30	subsection, the pass through entity shall claim the refund on forms
31	prescribed by the department of state revenue.
32	SECTION 6. IC 6-3.1-13-27 IS AMENDED TO READ AS
33	FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 27. (a) Subject to all
34	other requirements of this chapter, the board may award a tax credit
35	under this chapter to a nonprofit organization that is a high growth
36	company with high skilled jobs (as defined in IC 4-4-10.9-9.5) if:
37	(1) the nonprofit organization:
38	(A) is a taxpayer (as defined in section 10 of this chapter); and
39	(B) meets all requirements of this chapter; and
40	(2) all of the following conditions are satisfied:
41	(A) The wages of at least seventy-five percent (75%) of the
42	organization's total workforce in Indiana must be equal to at



1	least two hundred percent (200%) of the average county wage	
2	paid:	
3	(i) in the county in which the project will be located, as	
4	determined by the department of commerce, in the case of	
5	an application submitted before January 1, 2005; or	
6	(ii) to all employees working in the same NAICS industry	
7	sector in the county where in which the project for which	
8	the credit is granted will be located, in the case of an	
9	application submitted after December 31, 2005.	
10	(B) The organization must make an investment of at least fifty	
11	million dollars (\$50,000,000) in capital assets.	
12	(C) The affected political subdivision must provide substantial	
13	financial assistance to the project.	
14	(D) The incremental payroll attributable to the project must be	
15	at least ten million dollars (\$10,000,000) annually.	_
16	(E) The organization agrees to pay the ad valorem property	
17	taxes on the organization's real and personal property that	
18	would otherwise be exempt under IC 6-1.1-10.	
19	(F) The organization does not receive any deductions from the	
20	assessed value of the organization's real and personal property	
21	under IC 6-1.1-12 or IC 6-1.1-12.1.	
22	(G) The organization pays all of the organization's ad valorem	
23	property taxes to the taxing units in the taxing district in which	
24	the project is located.	_
25	(H) The project for which the credit is granted must be located	
26	in a county having a population of more than one hundred	
27	eighty thousand (180,000) but less than one hundred	
28	eighty-two thousand seven hundred ninety (182,790).	v
29	(b) Notwithstanding section 6(a) of this chapter, the board may	
30	award credits to an organization under subsection (a) if:	
31	(1) the organization met all other conditions of this chapter at the	
32	time of the applicant's location or expansion decision;	
33	(2) the applicant is in receipt of a letter from the department of	
34	commerce stating an intent to pursue a credit agreement; and	
35	(3) the letter described in subdivision (2) is issued by the	
36	department of commerce not later than January 1, 2000.	



COMMITTEE REPORT

Madam President: The Senate Committee on Economic Development and Technology, to which was referred Senate Bill No. 414, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- Page 2, line 21, after "2005," insert "the amount specified by the calculation associated with one (1) of the following descriptions that characterizes the number of businesses in the NAICS industry sector to which the applicant's business belongs:
 - (i) If there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located, determine the average compensation paid during that same period to all employees working in the same NAICS industry sector in the county in which the applicant's business is located multiplied by one hundred five percent (105%).
 - (ii) If the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana, determine the average compensation paid during that same period to all employees working in the NAICS industry sector throughout Indiana multiplied by one hundred five percent (105%).
 - (iii) If the applicant's business is the only business in the same NAICS industry sector in Indiana, determine the compensation for that same period corresponding to the federal minimum wage multiplied by two hundred percent (200%).".

Page 2, delete lines 22 through 25.

Page 3, line 17, strike "shall" and insert "may".

Page 3, line 28, delete "to all employees working in the same NAICS industry" and insert "in the case of an application submitted after December 31, 2005:

- (i) to all employees working in the same NAICS industry sector in the county in which the applicant's business is located, if there is more than one (1) business in the same NAICS industry sector in the county in which the applicant's business is located;
- (ii) to all employees working in the same NAICS industry







sector in Indiana in which the applicant's business is located, if the applicant's business is the only business in the same NAICS industry sector in the county in which the applicant's business is located but there is more than one (1) business in the same NAICS industry sector in Indiana; or

(iii) to all employees working in the same county as the county in which the applicant's business is located, if there is no other business in Indiana in the same NAICS industry sector.".

Page 3, delete lines 29 through 31.

Page 3, line 39, strike "shall" and insert "may".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 414 as introduced.)

FORD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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